IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1320

EDWARD V. HANRAHAN, et al.,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS ex rel. BARNABAS F. SEARS, AS SPECIAL STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, et al.,

Respondents.

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

BRIEF FOR RESPONDENT, THE PEOPLE OF THE STATE OF ILLINOIS, IN OPPOSITION

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The People of the State of Illinois ex rel. Barnabas F. Sears, as Special State's Attorney of Cook County, Illinois (Respondent), respectfully file this Brief in opposition to the Petition for a Writ of Certiorari. Respondent respectfully requests an expedited determination for reasons assigned in motion for same filed herewith.

QUESTIONS PRESENTED.

1—Whether the Petition should be dismissed for Petitioners' failure to comply with Rule 23(4).

2—Whether the judgment at bar awarding a Writ of Mandamus, disposing of but one facet of a criminal case and leaving others (including the validity of the Indictment, and subsequent Pre-Trial Motions, and subsequent proceedings therein including Trial) for resolution by the Trial Court, is a final judgment within the meaning and purpose of 28 USC 1257.

3—Whether, in a criminal case, before trial and conviction, a judgment awarding a Writ of Mandamus to expunge an order of a Trial Court ordering a public hearing into the conduct of a prosecutor before a Grand Jury raises a constitutional question subject to review by this Court.

4—Whether, in the light of the facts of this case, prompt and orderly judicial procedure requires that the Petition be denied.

STATEMENT OF THE CASE.

Respondent, conformably with Rule 40(3) of the Rules of this Court, represents that the "Statement of the Case" contained in the Petition for the Writ does not make a complete disclosure of the facts and contains inaccuracies. Respondent therefore respectfully submits the following Statement of the Case.

This Case relates to the Incident of December 4, 1969, which has come to be known as the Black Panther Raid (Illinois Supreme Opinion 12/17/71, at Petitioners' Appendix A, Page A-1; R.12).(*) The Incident involved members of the Chicago Police Department assigned to the Office of the State's Attorney of Cook County, Illinois. They obtained a Search Warrant to seize illegal weapons and, in the early morning hours of December 4, 1969 entered the First Floor Apartment at 2337 West Monroe Street, Chicago, occupied in part by members of the Black Panther Party. At the close of the Incident, two of the nine Occupants were dead and four others wounded. (News Stories A, NN etc. at R.8, and AA at R.11). The dead were Fred Hampton, Chairman of the Illinois Black Panther Party, and Mark Clark, a Black Panther organizer from Peoria, Illinois.

(*) "R" refers to Documents transmitted to this Court. R.1-17 are Documents transmitted by Clerk of Illinois Supreme Court at request of Petitioners. R.18 is Document certified by Clerk of Illinois Supreme Court at request of Respondent. R.19 and 20 are Documents certified by Clerk of Circuit Court of Cook County, Illinois at request of Respondent. R.18-20 are filed herein by Respondent.

The State's Attorney's Office presented the matter to a County Grand Jury which returned Indictments against the seven survivors in January 1970, charging them with numerous acts of criminal conduct at the time of the Incident. On May 8, 1970, the State's Attorney's Office dismissed those Indictments and did not reinstate them within the time permitted by law, thus foreclosing any inquiry by any County Grand Jury (including the Special Grand Jury in this Case) as to the conduct of the survivors (Resp. App. F, at pp. 41a and 42a of this Brief).

In the meantime, the United States Department of Justice presented the matter to a Federal Grand Jury. On May 15, 1970, that Grand Jury issued a Report which was printed by the Government Printing Office and distributed as a public document. The Report stated that there was evidence of possible violations of the Illinois Criminal Code (Resp. App. A at p. 1a).

From May 29, 1970 through June 17, 1970, various public groups in Chicago filed Petitions with Judge Joseph Power, the Presiding Judge of the Criminal Division of the Circuit Court of Cook County. The Petitions asked that the Court appoint a Special State's Attorney and impanel a Special County Grand Jury to investigate the Police-Panther Incident and related events occurring after the Incident (Par. 3 of Petn. for Mandamus and Prohibition, at R.7).

A Special Cook County Grand Jury of 23 persons was impanelled on December 7, 1970. It is referred to herein as the Special Grand Jury. It met on approximately 60 occasions from December 7, 1970 through June 30, 1971. It called about 55 Witnesses and received about 150 Ex-

hibits. The Transcript comprises about 5500 pages (Par. 8, Petn. for Mandamus and Prohibition, at R.7).

The Petition for Certiorari, filed with this Honorable Court, is directed at those Grand Jury Proceedings. The Petition nowhere presents a summary of those Proceedings. Such a summary is needed for an understanding of the matter. A detailed summary of the Grand Jury Proceedings and related Court matters will be found at Paragraphs 8 through 41 of the Petition for Mandamus and Prohibition filed by Respondent with the Illinois Supreme Court. That Petition has been filed with this Court as R.7. A short summary follows.

The Special Grand Jury concluded its hearing of evidence on April 15 and considered Indictments on April 20 and 21, 1971. It voted a No Bill on one Indictment on April 20 (13 Counts including Manslaughter, Aggravated Battery and so on). On April 21, it voted a True Bill on an Indictment for Conspiracy To Obstruct Justice (Par. 9 and 10, R.7). It is that Indictment, later reaffirmed by the Grand Jury on June 24, 1971, and returned in open Court on June 25, 1971, which is the Indictment in this Case.

On April 22, 1971, Edward Hanrahan asked permission to appear before the Special Grand Jury (Par. 11, R.7). He had previously been invited to appear by Letter dated December 18, 1970 (provided he sign an Immunity Waiver) but had not responded (R.3 at Pages 6 and 7 of Documentary Exhibit O). Also on April 22, Presiding Judge Power called the Grand Jury into his Courtroom and directed Special State's Attorney Sears to call (as Witnesses before the Grand Jury) all persons who had

testified before the Federal Grand Jury (Par. 11, R.7). Sears declined (R.3 at Page 7 of Doc. Ex. O).

On April 26, 1971, Judge Power publicly held Sears in contempt for his refusal (R.3 at Page 7 of Doc. Ex. O). This Contempt Order was set aside by the Illinois Supreme Court in its June 23rd Decision. *People ex rel. Sears* v. *Power*, 49 Ill. 2d 14, 31, 273 N.E. 2d 380, 389 (1971).

On April 26 through April 29, 1971, while the Special Grand Jury was still in session, certain persons (primarily the Petitioners in this Court) filed Petitions with Judge Power, alleging that the Special State's Attorney had improperly influenced the Grand Jury, and asking that he be dismissed and that the Grand Jury be discharged (Par. 14, R.7). On May 20, 1971, these Petitions were the subject of an application by Respondent to the Illinois Supreme Court, asking that the Court, as part of its inherent supervisory power for Mandamus and Prohibition, issue Writs prohibiting any action on the Petitions, so that the Grand Jury could complete its work. The Supreme Court consolidated this application with the already pending appeal from the Contempt Order. On June 23, the Illinois Supreme Court denied the Writ of Mandamus, holding that Judge Power had authority to make an *in camera* inquiry of the Grand Jury, but granted the Writ of Prohibition forbidding him to conduct private conferences with individual Grand Jurors. *People ex rel. Sears* v. *Power*, 49 Ill. 2d 14, 36, 273 N.E. 2d 380, 392 (1971).

In the meantime, the Special Grand Jury voted on April 22 to hear Hanrahan, provided he sign an Immunity Waiver (Par. 11, R.7), and voted on April 26 not to call the additional witnesses (R.3, at Page 7 of Doc.

Ex. O). Hanrahan signed the Immunity Waiver and testified before the Grand Jury on ten separate occasions from April 27 through May 24, 1971 (Par. 13, R.7). The Transcript of his testimony was before the Illinois Supreme Court but was designated and is not a part of the record filed here.

On June 24, the day following the Illinois Supreme Court Opinion, the Special Grand Jury again met in regular session, further to consider Indictments (Par. 23, R.7). The Grand Jury voted No Bills on all draft Indictments considered that day (various counts charging Official Misconduct etc.). However, the Grand Jury Foreman advised the Special State's Attorney that the Grand Jury had re-affirmed the True Bill of April 21 (Par. 23, R.7). On June 25, the Special Grand Jury returned the Indictment in open Court (Par. 24, R.7). Judge Power assigned it Case No. 71 CR 1791 and directed that it be sealed and the file impounded (Par. 24, R.7).

The Grand Jury continued in session. On June 30, it considered further drafts of Indictments (including Counts on Official Misconduct, rewritten to accommodate a problem of the Statute of Limitations; and also including Counts on Armed Violence). The Grand Jury voted each to be a No Bill (Par. 29, R.7). The Grand Jury then considered a short written Report to be presented to the Presiding Judge, stating that the Jury had voted One True Bill and Four No Bills, and asking that the Jury be continued in existence "pending possible future legal action that may necessitate their recall for further consideration herein" (R. 3 at Doc. Ex. G). The Grand Jury then filed its Report with Presiding Judge Power in open Court (Par. 30, R.7).

There then ensued a series of Hearings before Presiding Judge Power. Various Petitioners, most of whom are Petitioners here, asked that the Court hold *in camera* hearings and quash the Indictment (Par. 27, R.7). Judge Power on August 10 appointed a so-called Amicus Curiae to read the Grand Jury Transcript, to conduct an ex parte investigation, and to conduct an examination of the Grand Jurors in public hearings on the issues of alleged prosecutorial misconduct (Par. 31 and 32, R.7).

On August 13, 1971, The People ex rel. Sears et al filed a Motion in the Illinois Supreme Court, asking leave to file a Petition for Mandamus and Prohibition. The Petition prayed that the Supreme Court, as part of its general supervisory power over Illinois Courts, direct Judge Power to expunge his August 10th Order appointing an Amicus Curiae, etc. and to open the Sealed Indictment for further proceedings according to law.

On August 23, 1971, the Illinois Supreme Court, in its own words, took "the unusual action" of denying the Motion for leave to file the Petition for Mandamus and Prohibition and "simultaneously resolving the issues there raised without permitting additional briefing of those issues or oral argument thereon" as it had "the salient facts" before it in the prior proceeding which were "determinative of the issues in this proceeding." The Court specifically held that Judge Power's Order of August 10, 1971 "insofar as it was thought to authorize appointment of an amicus to conduct the inquiry therein authorized was incorrect"; that its prior Opinion "contemplated that any investigation of the integrity of the grand jury proceedings deemed necessary by the trial judge would be conducted by the Judge himself."

The Court also held that the Trial Court's interpretation of its prior Opinion as giving persons, who feared they might be indicted, standing to make a pre-indictment challenge of Grand Jury proceedings "was in error"; that at the present time it was necessary "to decide only that a prospective defendant is without standing to prevent the return of an indictment, except in cases in which the processes of the court have been abused."

The Illinois Supreme Court noted that, in the time since its earlier Opinion had been filed, the Grand Jury had returned an Indictment and No Bills, and that the Indictment had been suppressed pending resolution of the challenge to the integrity of the Grand Jury proceedings. The Court concluded that because an Indictment and No Bills had been returned "that the interests of justice will be best served by the trial judge opening and filing such indictment, and thereafter proceeding according to law."

This Opinion was not ordered published and is therefore not printed in the Official Reports. It is filed in this Court as R.18 and is Appendix B hereto (pp. 10a to 13a).

Presiding Judge Power opened the Indictment the next day, August 24. The Indictment appears at R.3 (Doc. Ex. B). It is printed as Appendix A hereto (pp. 1a to 10a). The Indictment charges Conspiracy To Obstruct Justice, with intent to obstruct criminal prosecution of the Police with regard to their acts in connection with the Incident, and to obstruct the defense of the Surviving Occupants on then pending criminal charges. The Indictment names 14 Defendants, all of whom (except Jalovec, Sadunas, and Koludrovic) are Petitioners in this Court.

The Presiding Judge, after opening the Indictment, set Arraignment for August 31 (Par. 35, R.7). At the Arraignment Date, no Pleas were entered. Judge Power instead assigned the Indictment (Case 71 CR 1791) to Judge Romiti for all further proceedings thereon (Par. 36, R.7). All parties at once appeared before Judge Romiti. The Defendants filed several Motions. These included a Motion by Hanrahan asking leave to interview Grand Jurors, "*subject to such protective orders as may be appropriate*" (emphasis added) (Par. 37, R.7). The Special State's Attorney then returned to the Courtroom of Judge Power who (as Presiding Judge) still had jurisdiction as to the continuing existence of the Grand Jury, and submitted a routine Motion (under local Court Rules) asking that the life of the Special Grand Jury (expiring September 2) be extended for another month (Par. 38, R.7). Some of the Defendants' Attorneys argued that this would prevent them from interviewing Grand Jurors (R.5 at Court Trans. Ex. No. 4). Judge Power then stated (Par. 38 at Page 20, R.7):

> Judge Power: ". . . You are at liberty to talk to the Grand Jurors and use them as witnesses. . ."

The Special State's Attorney asked that this be made the subject of a written Court Order and Judge Power stated (Par. 38 at Page 22, R.7):

> Judge Power: "There is no question nor necessity for an order really."

The court records ("Half Sheets") (R.3 at Doc. Ex. J-1) for Judge Power for that day show that no order (oral or otherwise) was posted as having been entered with regard to the interviewing of Grand Jurors.

The Special State's Attorney on the next day, September 1, presented an emergency Motion to Judge Romiti, asking that there be no interviewing of Grand Jurors absent a court order with protective provisions (Par. 40, R.7). Attorney Coghlan (representing Defendant Meade) then stated that he and Defendant Hanrahan had gone to Washington, Iowa on the night of August 31 and had gotton an unsworn Statement from Grand Juror Clara Goucher (Par. 40 at Page 23, R.7). Coghlan filed the Statement in open court (R.5, Court Transcript Exhibit #5 at page 33). The Goucher Statement was highly critical of the Special Prosecutor. Attorney Coghlan, in his argument to Judge Romiti, stated "The defense here is a personal assault on the Prosecutor" (R.5, Court Transcript Exhibit #5 at pages 30-31). Judge Romiti denied Respondent's Motion (Par. 40, R.7).

There were a series of Motions and Counter-Motions before Judge Romiti in the period from September 2 to September 20. The Judge then ordered the Defendants to file all motions to dismiss, with regard to the Indictment, by September 24 (Par. 42, R.7). It was during this period that the Defendants' attorneys, acting through Attorney Coghlan, visited Grand Jurors *ex parte* and obtained the Affidavits of Grand Jurors Murtaugh, Scott and Zichittella (see dates on those documents, filed as Petitioners' App. C at pages A-68, A-73 and A-74). Respondent, however, took the position that it was inappropriate for anyone to interview Grand Jurors absent a proper court order and did not do so in that period.

The Defendants on September 24 filed 2 Motions to Dismiss the Indictment, one Motion filed by Hanrahan and the other Motion filed by the remaining Defendants.

The two Motions were based on 8 grounds:

(1) Alleged improper conduct by the Special State's Attorney and the Assistants before the Grand Jury.

(2) Alleged effect of publicity on the Grand Jury.

(3) Alleged error of the Special State's Attorney in presenting a Draft Indictment before the Grand Jury had taken a tentative vote on probable cause.

(4) Alleged error in that the Special State's Attorney was supposedly present in the Grand Jury Room during its deliberations.

(5) Alleged failure to state an offense.

(6) Allegedly unjustified delay from the time of the offense until the return of the Indictment.

(7) Alleged error with regard to Grand Jury's consideration of Defendants' prior testimony before the Federal Grand Jury.

(8) Alleged running of the Statute of Limitations.

Attached to the Motions were the Goucher Statement and the Affidavits of Murtaugh, Scott and Zichittella, together with copies of News Stories (Par. 43, R.7).

On October 4, 1971, the Special State's Attorney filed a detailed Motion to Strike Paragraphs 1 through 4 of the Motions to Dismiss, which related to the proceedings before the Grand Jury. The Motion to Strike is printed in this Respondent's Brief as App. C, at pp. 14a to 30a. The Motion was accompanied by Affidavits of the Special State's Attorney and the four Special Assistant State's Attorneys, together with detailed Tables of Analysis showing specifically wherein the Murtaugh Affidavit and the Goucher Statement were materially contradicted by the Special Grand Jury record. Those Affidavits and

Tables, referring to grand jury minutes, were sealed; were later filed as Sealed Exhibits with the Illinois Supreme Court; and appear herein at R.3 as Documentary Exhibit O-1. The Motion to Strike can itself be summarized as follows:

(1) As to alleged Improper Conduct: (a) The Goucher Statement and the Affidavits were improperly obtained and cannot be considered. (b) Even if those items had been properly obtained, the Statement and Affidavits of Grand Jurors cannot, under existing Illinois Law, be used to impeach the Indictment. (c) Even if the items can be used, they do not make a sufficient showing to justify a Hearing on alleged Improper Conduct because the Statement is unsworn and because the Affidavits are contradicted in material respects by the Grand Jury Transcript itself. (d) An investigation into the conduct of the prosecutor should never, under any circumstances, be instituted except on the basis of credible, detailed, sworn and persuasive averments by witnesses as to the irregularities complained of which must be shown to have resulted in substantial injustice to the defendants (Chap. 38, Ill. Rev. Stats., Sec. 114-1-a-5). (e) No such showing, as a matter of law, was made here.

(2) As to alleged effect of Publicity: This is generally, as a matter of law, no ground for attack on a Grand Jury's regularly returned Indictment. In any event, the publicity occurred *after* the Indictment was first voted on April 21, 1971.

(3) As to alleged Improper Presentation of Indictment before Vote on Probable Cause: This is based on a misreading of the Statute (Section 112-4-c). The Law clearly permits presentation of a proposed draft of an Indictment before any vote has been taken by the Grand Jury.

(4) As to alleged Presence During Deliberations: This is not supported by any factual showing whatsoever, and the contrary is shown by the Affidavits of the Special State's Attorney and the Assistants.

The Arguments on the Motions to Dismiss included assertions by the Defendants that the Special State's Attorney did not have a Court Reporter present at all Grand Jury Sessions and a claim that this was blameworthy, particularly in the light of an alleged direction by Judge Power that a Court Reporter be present at all times. This is repeated by Petitioners here (Petn. p. 9). This is inaccurate. Illinois Law does not require that Grand Jury proceedings be transcribed in any respect. *People* v. *Aughinbaugh*, 36 Ill. 2d 320, 324-325, 223 N.E. 2d 117, 120 (1967). Moreover, the claim that Judge Power directed that there be a Court Reporter at all times is nowhere supported by the Record in this Case, the first Record reference thereto being on May 11, 1971 when Judge Power raised the matter with the Special State's Attorney in open Court, at a time when the Grand Jury had substantially completed its work (See Page 8 of People's Reply Brief in No. 44781, Illinois Supreme Court, appearing at R.11). The Grand Jury Transcript itself shows that before May 11, 1971 the Special State's Attorney had the Testimony of all Witnesses fully transcribed and after May 11, 1971 (when Judge Power first raised the issue) the Special State's Attorney not only had all Testimony transcribed but also all colloquy, except the Grand Jury's deliberations and vote. Prior to that, the Respondent had been following the customary Cook County practice of recording Testimony only and not colloquy between the State's Attorney and the Grand

Jurors, as evidenced by Grand Jury Exhibit 122 (R.11, People's Reply Brief in No. 44781, p. 8).

Attached as Appendix D to the Petition (A. 75-81) is a "summary" of "facts" gleaned by Petitioners from an examination of the five counter-affidavits of Respondent's counsel, allegedly showing those facts denied and those admitted specifically, by inference or by way of "negative pregnant" (Pet. 10). The five counter-affidavits are not in Petitioners' Appendix, but are in the record. (R.3, Doc. Ex. O-1, Exs. T-1 and T-2). Nor is Respondent's Motion to Vacate Judge Romiti's order for the hearing (R.3, Doc. Ex. W) in that Appendix. That motion pointed out material variances between the opinion (Pet. App. b, pp. A. 20-47) upon which that order was based and the Grand Jury record, not the least of which was Judge Romiti's erroneous statement that the Grand Jury, after voting no bills on April 20, 1971, on April 21st, without hearing any additional evidence, voted a true bill on a charge "very similar in nature" to what they had no-billed the day before (R.3 Doc. Ex. W, p. 4).

Appendix C hereto (pp. 14a-26a) is Respondent's Motion to Strike the paragraphs of the Indictment which sought the hearing, and points up wherein the affidavit of Murtaugh and the Statement of Goucher are false in numerous material respects, as disclosed by the Grand Jury record, (*id.* pp. 18a-25a).

Petitioners' so-called summary is merely the conclusions of counsel and inferences drawn by them from documents allegedly in this record, is inaccurate and misleading and adds nothing to a resolution of the matters at bar. An examination of the record will disclose that all material charges in the Murtaugh Affidavit and the

Goucher Statement have been denied by said counter-affidavits or by the Grand Jury record itself.

In their Statement of the Case Petitioners refer to the "barrage of publicity" that has surrounded the case (Petn. p. 9). Omitted is the fact that much of that publicity emanated from Petitioners, as Mr. Justice Schaefer specifically noted in his Opinions in this case (Petn. App. A, p. A 12). Omitted also is the fact that as early as January 28, 1971, Attorney Coghlan was quoted in two Chicago newspapers as claiming that the Special Grand Jury was biased and "slanted against policemen." (See Exs. AA and BB, attached to People's Reply Brief, R.11). Further, all of the publicity mentioned by Petitioners occurred *after* April 21, 1971, the day the Jury first voted the Indictment at bar.

On October 22, 1971, Judge Romiti denied the People's Motion to Strike (Petn. App. B, p. A 20). He held that the Defendants had made the requisite showing for hearings on the 4 Grand Jury issues raised by the Motions to Dismiss. He ordered that there be public hearings, at which all the Grand Jurors would appear as Witnesses, starting November 8.

Respondent then applied to the Illinois Supreme Court for the third time (Gen. No. 44781), asking that the Court, in the exercise of its supervisory power over Illinois Courts, issue Writs of Mandamus and Prohibition, directing Judge Romiti to expunge his October 22nd Order and to take no further action with regard to the Grand Jury issues of the Motions to Dismiss. That Court granted leave to file the Petition for Mandamus and Prohibition and issued an Order directing Judge Romiti

to stay the proposed hearings into the Grand Jury matters. The Stay Order did not affect the remaining 4 issues of the Motions to Dismiss. Those issues were fully briefed and argued before Judge Romiti on November 24.

The Illinois Supreme Court on December 17, 1971 handed down its decision, directing that a Writ of Mandamus and Prohibition issue. *People ex rel. Sears* v. *Romiti,* 50 Ill. 2d 51 (1971). The Court denied rehearing on January 14, 1972 (Pet. App. A, p. A-1-19).

On the last day allowed for filing (April 13), this Petition for Certiorari was filed to review that decision. No attempt was made to ask the Illinois Court to stay its Writ. Nothing in the Petition here informs this Court of the proceedings which have occurred in the interim. The following is therefore necessary that this Court be informed of the present status of the case. Reference is made to a summary of the proceedings before Judge Romiti from February 2, 1972 to date (April 25, 1972), printed as App. D hereto, pp. 31a to 34a.

On February 2, 1972, Judge Romiti, pursuant to the Supreme Court Writ, expunged his Order of October 22, 1971 which called for the public hearing into alleged prosecutorial misconduct. He then denied in toto the Defendants' motions to dismiss the indictment (App. D hereto, p. 31a), which disposed of the remaining four challenges to the indictment and which had been argued on November 24th. He then set Arraignment for February 3rd.

All 14 Defendants were arraigned on February 3, 1972. All entered Pleas of Not Guilty. Defendants Jalovec, Ko-

ludrovic and Sadunas filed Motions for Pre-Trial Discovery (App. D at pp. 31a to 32a). Defendant Jalovec filed a Demand for Trial. It must be noted that Illinois has a Speedy Trial Statute requiring the State to proceed to Trial within 160 days from the date a Defendant files a written Demand; and the Statute provides that, if the State does not proceed to trial in that time, such Defendant shall be absolutely discharged (Section 103-5-b of the Illinois Criminal Code; Illinois Revised Statutes 1971, Chapter 38, Section 103-5-b). This time expires on July 12, 1972.

Also on February 3, 1972, Judge Romiti entered an Order, specifying the Schedule for all Pre-Trial Motions, namely, all Motions (including Motions for Pre-Trial Discovery) to be filed by March 1, 1972; all Responses to be filed by March 20, 1972; and Hearings thereon set for March 27, 1972 (App. D at p. 32a).

In the period from February 3, 1972 to the present date (April 25, 1972), the following 33 Pre-Trial Motions have been filed:

Hanrahan Motion for Bill of Particulars, Motion for Discovery, Motion to Amend Indictment, Motion for Additional Particulars.

Jalovec, Groth et al Motion for Bill of Particulars.

Meade Motion to Suppress Testimony, Motion for Discovery.

Mulchrone Motion to Suppress Testimony, Motion for Discovery.

Koludrovic and Sadunas Motion to Suppress Testimony, Motion to Amend Indictment, Motion for Discovery.

Jalovec Motion to Amend Indictment, Motion for Discovery.

Groth, Ciszewski, Corbett et al (the 8 Policemen) Motion to Amend Indictment, Motion for Discovery, Motion to Suppress Testimony.

Meade and Mulchrone Motion to Amend Indictment.

Groth, Ciszewski, Corbett et al (the 8 Policemen) Motion for Leave to File Motion to Dismiss Indictment based on allegedly improper Grand Jury Selection.

The People's Motions for Discovery from the Defendants (14 Motions).

Also in the period from February 3, 1972 to the present date (April 25, 1972), the People have filed the following listings, pursuant to Illinois Pre-Trial Discovery Rules: listing of intended witnesses, listing of documents, listing of photographs, listing of physical objects and other such listings.

On March 23rd Attorney Coghlan, representing Defendants Meade and Mulchrone (Petitioners here) filed a list of intended witnesses, to which was attached (as required by Illinois law) Statements obtained by him from Grand Jurors Phyllis Hymon, Dorothy Lewis and Helen Doering. These Statements are filed as a part of the record here and are Appendix E (pp. 35a to 40a). Hymon's Statement was given on September 1, 1971, Doering's on September 8th and Lewis' is undated. The four documents supporting that part of the Motion to Dismiss which asked for a public hearing of the prosecutor's conduct were taken as follows:

Goucher, August 31, 1971 (Pet. App. p. A-69);
Murtaugh, September 6, 1971 (id. p. A-68);
Zichittella, September 16, 1971 (id. p. A-73);
Scott, September 16, 1971 (id. p. A-74).

The Hymon, Lewis and Doering Statements (Resp. App. E, pp. 35a etc.) are considerably at variance with those produced by Petitioners and were not presented to Judge Romiti, nor was the Illinois Supreme Court informed of their existence.

On March 27, 1972, Defendants Groth et al asked leave to file instanter a Motion to Dismiss the Indictment because of allegedly improper selection of Grand Jurors, to which the Respondent filed objections. Respondent also moved to strike the names of Grand Jurors from Defendants Meade and Mulchrone's list of witnesses and for an order prohibiting any further interviews. The Court set April 11th for argument on those Motions. The Court also received Respondent's report as to the status of pretrial discovery and heard arguments on the defense Motions to Amend the Indictment and for Bills of Particulars. Defendants Koludrovic and Sadunas then filed a Demand for Trial (App. D, p. 33a).

On April 11th, 1972, Judge Romiti denied the Groth et al Motion to Dismiss the Indictment on account of improper selection of Grand Jurors, denied Respondent's motion to strike the names of Grand Jurors from the Meade and Mulchrone list of witnesses, continued the ruling on the Defendants' Motions for bills of particulars and to amend the Indictment to May 2nd, ordered Respondent to continue compliance with discovery for Defendants and report on May 2nd, and tentatively set the case for Trial on June 12, 1972 (App. D, p. 34a).

ARGUMENT.

I. THE PETITION FOR CERTIORARI FAILS TO MAKE A CLEAR AND COMPLETE DISCLOSURE OF THE FACTS AS REQUIRED BY RULE 23(4).

The Petition for Certiorari includes a "Statement of the Case" (Pet. 5-11). The Statement purports to summarize the proceedings below, concluding with the Illinois Supreme Court Decision of December 17, 1971. (Rehearing denied January 14, 1972). There the Statement stops.

The Statement in the Petition is entirely insufficient, in that it does not contain a clear and complete disclosure concerning the controversy. Full disclosure is required by this Court's Rule 23(4) which states:

> Rule 23(4). The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Complete disclosure is required so that this Court can rule on the Petition in the full light of the facts and not in the half light of part of the facts.

This Court has frequently stressed the importance of this rule. In *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U.S. 508 (1924), this Court said:

> "Heretofore we have pointed out the necessity for clear, definite and complete disclosures concerning the controversy when applying for certiorari."

In *Furnes, W. & Co.* v. *Yang-Tsze Inc. Asso.*, 242 U.S. 430 (1917), this Court said:

> "Nevertheless, in the circumstances, we think it was incumbent on counsel for both sides to see that the petition and reply thereto disclosed the real situation. The oversight has resulted in unfortunate delay and needless consumption of time."

Respondent respectfully suggests that it is quite apparent from the Statement of the Case in its brief, pp. 3 to 20, that Petitioners failed to make the "clear, definite and complete disclosures concerning the controversy" required and envisioned by Rule 23(4). That Respondent felt obligated to make such a disclosure should in no wise excuse Petitioners from the duty imposed upon them by the Rule or preclude its invocation. Particularly is this true in a case where the Petition was filed on the last day, and no valid grounds exist which would excuse compliance. In fact, the contrary appears, as is evident from the plethora of Motions and hearings in the Trial Court since the rehearing of the judgment awarding the Writ was denied last January 14th.

It is respectfully submitted that the Petition be denied for its failure to comply with Rule 24(4).

II. THE PETITION DOES NOT PRESENT A MATTER REVIEWABLE UNDER 28 USC 1257 IN THAT THE ACTION OF THE ILLINOIS SUPREME COURT IN AWARDING THE WRIT OF MANDAMUS AND PROHIBITION IN THE CASE AT BAR IS NOT A FINAL JUDGMENT WITHIN THE MEANING AND PURPOSE OF THE STATUTE.

The Petition bases its claim to jurisdiction in this Court on 28 U.S.C. Section 1257(3), which provides that, "Final judgments or decrees rendered by the highest court of a state . . . may be reviewed by the Supreme

Court . . . by Writ of Certiorari . . ." The action of the Illinois Supreme Court is not a "final judgment" within the meaning of the Statute. In awarding its original Writ of Mandamus and Prohibition, the Illinois Supreme Court here was exercising its general supervisory and administrative power over the trial court in *People* v. *Hanrahan et al*, Circuit Court of Cook County, No. 71 CR 1791, then pending before Judge Romiti. The Supreme Court specifically stated (Pet. App. A, p. A-4) that it was acting in accordance with its earlier analysis of the nature of its jurisdiction in mandamus and prohibition, set forth in *People ex rel. Sears et al* v. *Power et al*, 49 Ill. 2d 14, 33, 273 N.E. 2d 380, 390 (1971), wherein the Court specifically based its jurisdiction on its supervisory and administrative powers over inferior tribunals.

The action of the Illinois Supreme Court in issuing the Writ was purely interlocutory as regards the case pending in the trial court. The issuance of the Writ was not dispositive of the case, any more than the two earlier actions of the Illinois Supreme Court in this matter were dispositive of the case below.

The specific effect of the Writ was to void an order entered by the trial judge calling for a hearing into alleged prosecutorial misconduct before a Grand Jury and to prohibit such a hearing. The Writ actually disposed of but four grounds of the motions to dismiss the Indictment there (Grand Jury issues), leaving four grounds yet to be disposed of with regard to its validity. Since the Supreme Court's action, the Trial Judge has denied the remaining grounds of the motions to dismiss the Indictment, pleas of not guilty have been entered and the Trial Court has heard arguments on same, has re-

ceived Demands for Trial from three Defendants, has directed that pre-trial discovery be carried out promptly and has set a tentative date for Trial (*ante*, p. 20).

In Docket No. 253, in *Whitus* v. *Georgia*, 385 U.S. 545, this Court had granted a petition for certiorari to review an interlocutory appeal from a judgment denying certain petitioners' claims as to the grand jury which indicted them, which appeal was authorized by Georgia law. This grant was prior to any judgment of conviction. This Court "in view of the lack of finality of the order in this case" dismissed the writ in No. 253 "as improvidently granted . . .", p. 547.

As we read the Statute and the cases under it, its intent and purpose is to prevent piecemeal appeals from state court judgments, and particularly in criminal cases, to defer review until the final judgment of a state court which, at least for all practical purposes, ends the litigation there (*Mills* v. *Alabama*, 384 U.S. 214, 217), or, as stated by Mr. Justice Harlan in his separate opinion in *Mills*, "until the prosecution has run its final course in the state courts, adversely to the appellant" (384 U.S. at p. 223).

Collins v. *Miller*, 252 U.S. 364, involved a single judgment upon a petition for writ of habeas corpus setting forth a detention of the relator in extradition proceedings on three separate affidavits. The writ was denied as to the commitment on one of the affidavits and granted as to the commitments on the other two and ordered the case remanded for further hearing. Mr. Justice Brandeis, in dismissing the appeal, observed that, "To be appealable, the judgment must be not only final but complete"

and ". . . should be final not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved." (p. 370). He concluded by saying of the single judgment that "Only one branch of the case has been finally disposed of below, therefore none of it is ripe for review by this Court." (p. 371). *Collins* v. *Miller* was quoted with approval in *Republic Natural Gas Co.* v. *Okla.*, 334 U.S. 62, 72.

In the case at bar, the Writ of Mandamus and Prohibition issued didn't even dispose of all the issues involved in the "Affidavits" question. In point of fact, the action of the Supreme Court awarding the Writ dealt with only one of the three issues before it as to the Affidavits, as is apparent from the briefs (*post*, p. 30-31).

Parr v. *United States*, 351 U.S. 513, involved the finality of an order dismissing an indictment over the vigorous opposition of the defendant, (p. 515). This Court granted certiorari from that order and, in concluding that the order was not appealable, said that "The testing of the effect of the dismissal order must abide petitioner's trial, and only then, if convicted, will he have been aggrieved" (p. 517), citing *Heike* v. *United States*, 217 U.S. 423.

Heike involved the issue of the finality of a judgment entered upon a verdict directed in favor of the government on issues raised by a special plea in bar, in which the accused claimed immunity from prosecution because of his testimony before a grand jury. This Court held that it was not an appealable judgment where leave had been given to plead over and a plea of not guilty entered upon which no trial had been held, Mr. Justice Day saying, (217 U.S. at p. 430):

"As the case now stands, upon the plea of not guilty, upon which the issue raised must be tried to a jury, certainly the whole matter has not been disposed of. It may be that upon trial the defendant will be acquitted on the merits. It may happen that, for some reason, the trial will never take place. In either of these events there can be no conclusive judgment against the defendant in the case. It is true that, in a certain sense, an order concerning a controlling question of law made in a case is, as to that question, final. Many interlocutory rulings and orders effectually dispose of some matters in controversy, but that is not the test of finality for the purposes of appeal or writ of error. The purpose of the statute is to give a review in one proceeding after final judgment of matters in controversy in any given case. Any contrary construction of the court of appeals act may involve the necessity of examining successive appeals or writs of error in the same case, instead of awaiting, as has been the practice since the beginning of the government, for one review after a final judgment, disposing of all controversies in that case between the parties."

We are not unaware of *Bandini Petroleum Co.* v. *Superior Court*, 284 U.S. 8, 14, saying that a ". . . proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment" and *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 566, which applied the *Bandini* rule to a criminal case. We assume that the language in *Bandini* and *Rescue Army* was necessarily addressed to the particular and peculiar facts of those cases. Each of them arose in California and each involved the question of the jurisdiction of the state court over the subject matter. In California writs of prohibition will issue only where the trial court has no juris-

diction of the subject matter (*Bandini*, 284 U.S. at 15), whereas in Illinois, mandamus and prohibition will issue (as it did here) in the exercise of supervisory power over inferior courts, even though those courts have jurisdiction over the subject matter.

It is not enough to say that because a Writ of Prohibition or Mandamus has been ordered to issue, *ergo* it is a final judgment. The circumstances and time of its issuance and its supervisory and patently interlocutory character (as here), as distinguished from the writs in *Bandini* and *Rescue Army*, must be considered in determining whether the Writ is a final judgment subject to review by certiorari. In the case at bar, it is perfectly obvious that the Writ disposed of but one facet of the case, leaving many others to be determined as the myriad proceedings in the Trial grind slowly forward.

III. PETITIONERS PRESENT NO CONSTITUTIONAL ISSUE.

The Petition purports to present four questions (Petn. 3, 4). It argues but two (Petn. 14-24). The first one is an abstract argument that the 14th Amendment standards of due process and equal protection apply to state grand jury proceedings. It begins with a quotation (Petn. p. 14) from the first of the trilogy of the original proceedings of the Illinois Supreme Court thus far in this case (*People ex rel. Sears* v. *Power*, 49 Ill. 2d 14, 36). That quotation is from Judge Frank's opinion in *In Re Fried*, (CC 2), 161 F. 2d 453, about the harm a wrongful indictment inflicts on a defendant not entirely remedied by acquittal, language not necessary to a decision in that case, and with which neither Judges Learned Hand nor Augustus Hand, sitting on the panel, concurred in their

separate opinions (161 F. 2d 453, 465). Chief Judge Leahy of the District Court of Delaware, in *U. S.* v. *Papaioanu*, 10 FRD 517, was clear that Judge Learned Hand didn't concur in the quotation (See Note 5, p. 518).

Further, it is obvious from the Illinois Supreme Court's opinion, sought to be reviewed here, that the Court changed its mind about Judge Frank's language in *In Re Fried* when, in quoting *Gitchell* v. *Illinois*, 146 Ill. 175, it spoke of "the hardship which an accused might suffer because he is not allowed to go behind an indictment to see how it has been found will be small, compared with the incalculable mischief which will result to the public at large by the disclosure of what the law deposits in the breast of a grand juror as an inviolable secret" (Petn. App. A, p. A-5).

Thus there is nothing in present Illinois law that supports Petitioners' statement "that neither trial nor acquittal may undo the harm done by a wrongful indictment" (Petn. 14). Nor do we find any case cited by Petitioners or elsewhere that says that the issue of prosecutorial misconduct rises to the dignity of a constitutional issue upon the return of the indictment and before trial and conviction, to say nothing about after pleas of not guilty and numerous pretrial and discovery motions, as disclosed by the record at bar (*ante*, pp. 18-20). As an abstract proposition, we do not quarrel with the first point of Petitioners' argument (Petn. 14-17).

Their second point (Petn. p. 17), that the "failure of the Illinois courts to protect Petitioners *from being indicted* by a biased and prejudiced grand jury denied them due process and equal protection" is totally with-

out precedent. All cases hold that a prospective defendant has no standing to interfere with the Grand Jury's proceeding prior to indictment, "except in cases in which the processes of the court have been abused." The Illinois Supreme Court squarely so held in the second mandamus case here (Gen. No. 44586, Resp. App. B, pp. 10a to 13a). See also *In Re Kittle,* 180 Fed. 946, 947, per Learned Hand, J.

What Petitioners are saying is that every time prosecutorial misconduct is charged and a few affidavits or statements of disgruntled jurors are produced tending to support the claim, it would become the duty of the trial judge to then and there hold a hearing in order to protect the prospective defendants from being indicted; that if the highest court of the State, in the exercise of its general supervisory power over inferior courts, ordered the trial judge to vacate an order calling for such a hearing, a constitutional question of due process and equal protection then arises requiring this Court to entertain a petition for certiorari seeking to review that highest State court's decision. And this without regard to whether the case might ever come to trial or the defendants might ever be found guilty.

Really, to state it is to answer it because the delay in the administration of justice would be calamitous. We would "break down all legal checks against technical, dilatory tactics" (per Proctor J. in *U. S.* v. *A.M.A.*, 26 F. Supp. 429, 430). We have had a fair share here. We would "divert and turn back the course of a criminal trial from a trial of himself (defendant) to a trial of the grand jury and the prosecuting officers" (*id.* at p. 431). And we would make theatre of an institution, the privacy of whose members our law has zealously guarded for

centuries. We really don't know how to answer Petitioners' argument, except to say that none of the cases cited even remotely support it from a constitutional standpoint.

Furtlier, some of the facts of the argument are misleading and not borne out by the record. Contrary to Petitioners' claim (Petn. 20), the Special State's Attorney did instruct the Grand Jurors to disregard newspaper publicity (People's Reply Brief in No. 44781, p. 9, R.11). The Presiding Judge did not order the Special State's Attorney to have a court reporter present at all times (Petn. 20) until May 11, 1971. After he did so order, a court reporter was present, including June 24th when the Grand Jury re-voted the Indictment they had voted on April 21st, after hearing Petitioner Hanrahan's testimony on ten separate occasions (*ante*, p. 7). (Incidentally, this testimony, consisting of ten volumes, which was before the Illinois Supreme Court, is the only part of the record not forwarded here. We see no point in burdening this Court with such testimony, so we have not ordered it transmitted.)

Even the dissenting opinion of the Illinois Supreme Court does not state the facts accurately. No mention is made in that opinion of those paragraphs of the People's Motion to Strike which pointed out seven or eight material facts in the Grand Jury record which impeached the so-called facts in the Affidavits. The dissenting opinion, in stating that the majority opinion went to greater lengths than the Special State's Attorney claimed (Petn. App. pp. A-14, A-15) is also inaccurate in that it ignores that there were three issues involved with respect to the use of Affidavits:

1—Grand Jurors could not impeach an Indictment duly returned by a Grand Jury and which they sat silently by and saw returned in open court (People's Sugg. No. 44781, R.2, pp. 20-27);

2—The Affidavits were improperly procured because no court order pursuant to the Statute was ever entered authorizing grand juror interviews (People's Sugg. No. 44781, R.2, pp. 28-36);

3—No sufficient showing was made to warrant inquiry into prosecutorial misconduct because such should never be instituted except on the basis of credible, detailed, sworn and persuasive averments by witnesses of the irregularities complained of (People's Sugg. No. 44781, R.2, pp. 37-67).

The Supreme Court of Illinois decided the case on Issue No. 1. It never reached Issues No. 2 and No. 3. The Special State's Attorney reviewed the law in Illinois and elsewhere on Issue 1 and specifically urged the court to adopt Issue 1. (Suggestions, id. pp. 26, 27, citing *inter alia, U. S.* v. *Garsson*, 291 Fed. 646, 649, per Learned Hand.) Thus it isn't exactly accurate for the dissenting opinion to say that the Court went further than the Special State's Attorney argued.

In *Beck* v. *Washington*, 369 U.S. 541, relied upon by Petitioners, the Court, quoting from *U. S. ex rel Darcy* v. *Handy*, 351 U.S. 454, said (369 U.S. 558):

> "While this Court stands ready to correct violations of constitutional rights, it also holds that 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and

that it be sustained not as a matter of speculation but as a demonstrable reality.' ".

And while on the subject of "essential unfairness" we point out the statements of Grand Jurors Hymon, Lewis and Doering (Resp. App. E, pp. 35a-40a), which came to light when Petitioners Meade and Mulchrone furnished Respondent with a list of witnesses on March 23, 1972 and were required under Illinois law to furnish a copy of their witnesses' statements. From the dates of at least two of these statements (the other is undated), it would appear that they were in the possession of the Attorney who took the other statements which were presented to the Court on the Motion to Dismiss (*ante*, p. 19). These Statements attribute no professional misconduct to the Special Prosecutor and the Assistants, quite the contrary. Certainly professional duty to one's brother at the bar and the Court required that a full disclosure of these Statements be made to the Trial Judge as well as the Supreme Court of Illinois, but none was made.

Thus, but one of three Issues involving the Affidavits have been decided. This Court will avoid deciding a constitutional question, if at all possible, and properly so. So if this Court took this case, all it could do would be to send it back to the Illinois Supreme Court to decide the other two questions. Would the illegal procurement of affidavits raise a constitutional question? Would a ruling that Petitioners had failed to make a sufficient showing to warrant a public trial into prosecutorial misconduct before a grand jury raise a constitutional question? And all of this before trial and conviction?

Further, there is no complaint, or even a suggestion, that the evidence before the grand jury was insufficient

to support the indictment. *Petitioners were afforded the opportunity of examining the entire Grand Jury Record* by Respondent without the necessity of any court order. An examination of the overt acts alleged in the Indictment (Resp. App. A, pp. 1a to 10a), shows that many of them were matters of common knowledge in Cook County, if not nationally, such as the Tribune Exclusive, the various Press and TV Conferences of Petitioner Hanrahan, the TV Reenactment on Channel 2, the questions and answers prepared in the IID Investigation, the Indictment of the surviving occupants of the apartment and its subsequent dismissal. Certainly Petitioners have the burden of showing "not as a matter of speculation, but as a demonstrable reality" that the alleged prosecutorial misconduct, which has been denied, influenced this Grand Jury, which returned *four* no bills and *one* true bill (*U. S. v. Rintelen*, 235 F. 787, 794, 795, per Augustus Hand, J. [SDNY]; *U. S. v. Bruzgo*, 373 F. 2d 383, 386 [CC 3]; *U. S. v. Johnson*, 319 U.S. 503, 513, per Frankfurter, J.)

IV. SOUND JUDICIAL ADMINISTRATION AND ORDERLY EXPEDITION OF CRIMINAL CASES REQUIRE THAT THE PETITION BE DENIED.

The Indictment in this case was returned in open court on June 25, 1971, following a first Mandamus wherein Petitioners unsuccessfully claimed their constitutional rights were being abridged. A second Mandamus was required to have it opened and recorded, which occurred on August 24, 1971. A third Mandamus, with Petitioners still claiming that their constitutional rights were being abridged, brought the Writ in this case, which was filed and observed by the Trial Court on February 2, 1972.

Now we have a Petition for Certiorari, filed on the last day, coincidentally two days after the trial court set June 12, 1972 as a tentative date for Trial.

It would seem that prompt and orderly judicial procedure then required that Petitioners move the Illinois Supreme Court *instanter* for a stay of the Writ and for a stay of the proceedings below, pending application to this Court for certiorari; and, if denied, that they file a similar motion with this Court, or one of the Justices, and then promptly file for certiorari. Petitioners could have readily done this while they were preparing all these other motions and arguing same, (*ante*, p. 18). as the alleged denial of a constitutional right certainly should have had first priority by them.

In concurring in the denial of the petition for certiorari in *Volpe* v. *D. C. Federation of Civic Assn.*, General No. 71-931, on March 28, 1972, the Chief Justice observed:

> "If we were to grant the writ, however, it would be almost a year before we could render a decision in the case. It seems preferable, therefore, that we stay our hand." (40 LW 3468).

We deem these words most appropriate in the light of the facts in this case and therefore respectfully submit that sound judicial administration and orderly expedition in the trial of criminal cases require that the Petition be denied.

CONCLUSION.

By reason of the premises, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BARNABAS F. SEARS, as Special State's Attorney of Cook County, Illinois

WAYLAND B. CEDARQUIST,
HOWARD T. SAVAGE,
ELLIS E. REID, and
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APPENDIX A

INDICTMENT

Case No. 71 CR 1791

People Of State Of Illinois v. Hanrahan Et Al

Criminal Division, Circuit Court Of Cook County

State of Illinois
County of Cook—ss.

The December 1970
Special Grand Jury Of
The Circuit Court Of Cook County, Illinois

Count I

The Grand Jurors of the December 1970 Special Grand Jury of the Circuit Court of Cook County, Illinois having been chosen, selected and sworn in and for the County of Cook in the State of Illinois pursuant to certain Petitions filed by various individuals and civic groups averring that a certain Report of the 1970 Federal Grand Jury for the Northern District of Illinois, published May 15, 1970, raised critical and unresolved questions concerning violations of the Illinois Criminal Code by employees of the State's Attorney's Office and employees of the Chicago Police Department, as well as possible violations by members of the Black Panther Party and other persons involved in the execution of a search warrant at 2337 West Monroe Street, Chicago, Illinois, and such other persons who, on December 4, 1969 or thereafter, may have been involved in the violation of the Illinois Criminal Code, relating to events occurring thereafter

and related thereto; and the Court, on the 26th day of June 1970, having found: (1) that the State's Attorney of Cook County, Illinois is interested in said matter which is, or may be, his duty to prosecute or defend and said matter is an appropriate cause or proceeding for the appointment of a competent attorney to prosecute such cause or proceeding with the same power and authority with relation thereto as the State's Attorney would have had if present and attending to the same, all within the provisions of Section 6 of Chapter 14 of the Illinois Revised Statutes of 1969; and (2) that the matters set forth in said petitions were of sufficient importance to confer jurisdiction upon the Court to order a special venire to be issued for a Grand Jury and that public justice required it, all within the provisions of Section 19 of Chapter 78 of the Illinois Revised Statutes of 1969, thereupon and on said date ordered that Barnabas F. Sears, Esquire, a member of the Bar of this State, upon taking the proper oath required by law, be appointed a Special State's Attorney of Cook County, Illinois, to prosecute any matters that may arise from these proceedings, with all the powers of a State's Attorney, as aforesaid, and was directed to draft the necessary orders for the issuance of a special venire for a Grand Jury at the earliest opportunity after having examined the said Federal Grand Jury Report; and thereupon the said Barnabas F. Sears having taken said oath, thereafter, pursuant to an Order entered by this Court on November 4, 1970, on petition of said Special State's Attorney, a special venire was issued for a Grand Jury, returnable the first Monday in December 1970; and the Grand Jurors having been duly impanelled, chosen, selected and sworn on December 7, 1970; and the said Grand Jury having

been duly extended for successive 30-day period by orders entered by the Court;

Said Grand Jurors of the December 1970 Special Grand Jury chosen, selected and sworn, in and for the County of Cook in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that from on or about December 4, 1969, and continuously thereafter, up to and including the filing of this indictment, at and within the County and State aforesaid,

Edward V. Hanrahan,	Charles Koludrovic,
Richard Jalovec,	John P. Meade and
John Sadunas,	John Mulchrone,
Daniel Groth,	William Corbett,
Raymond Broderick,	James B. Davis,
Edward Carmody,	Joseph Gorman,
John Ciszewski,	George Jones,

defendants herein, committed the offense of conspiracy, in that they did knowingly and wilfully, fraudulently and deceitfully conspire, combine, confederate and agree together and with each other, together with Harry Ervanian, Earl Holt, James Meltreger, Sheldon Sorosky and James B. Conlisk, Jr., named as co-conspirators but not as defendants herein, and with others to the Grand Jury unknown, to commit an offense to wit, obstructing justice, in that, with the intent to obstruct a criminal prosecution of Daniel Groth, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James Davis, Joseph Gorman and George Jones, with respect to their acts and conduct in the execution of a search warrant on December 4, 1969 at 2337 West Monroe Street, Chicago, Illinois, and to obstruct the defense to criminal charges then pending against Blair Anderson, Harold

Bell, Verlina Brewer, Brenda Harris, Deborah Johnson, Ronald Satchel and Louis Truelock, with respect to their acts and conduct at the said time and place of the execution of said search warrant, by unlawfully, wilfully and knowingly destroying, altering, concealing and disguising physical evidence, by planting false evidence and by furnishing false information, and pursuant to said conspiracy, they did, among divers other acts and conduct, commit the following overt acts, to wit:

1. On December 4, 1969, Daniel Groth, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James Davis, Joseph Gorman and others, conducted a search of the first floor apartment at 2337 West Monroe Street, Chicago, Illinois, and collected certain weapons that were seized in said search, but did not tag them in order to specify the location where they were discovered, nor process them for fingerprints in order to determine who had handled them prior to their seizure, and they further caused said weapons to be taken to the State's Attorney's office for public display rather than to be processed by the Chicago Police Department Crime Laboratory as possible evidence of an alleged crime:

2. Immediately following the aforesaid events on December 4, 1969, a Mobile Crime Laboratory team of the Chicago Police Department, consisting of Charles Koludrovic, Earl A. Holt, and others, were summoned by Assistant Deputy Superintendent Merlin A. Nygren to go to, and they did go to, 2337 West Monroe Street, Chicago, Illinois to perform their duties, which were to photograph the scene, as they found it, draw a rough sketch thereof, search for and recover whatever evidence was available, mark said evidence and transport said

evidence to the Chicago Police Department Crime Laboratory and make a report thereof. In executing these duties, said team intentionally focused on identifying shots allegedly fired at said police officers who conducted the said search, and said team knowingly conducted a totally inadequate and improper examination of the said scene, designed solely to establish the version of the officers who conducted said search, and said team further knowingly failed to search for and recover numerous material and relevant items of evidence relating to the events which occurred at the time and place aforesaid, which numerous relevant and material items of evidence were later recovered by others, including the Federal Bureau of Investigation.

3. On December 4, 1969, Richard Jalovec, Daniel Groth, Raymond Broderick, Edward Cagnody, John Ciszewski, William Corbett, James Davis, Joseph Gorman and George Jones met and had conversations at the State's Attorney's office at 2600 South California Avenue, Chicago, Illinois, concerning the events that occurred at 2337 West Monroe Street, Chicago, Illinois;

4. On December 4, 1969, Richard Jalovec and Edward V. Hanrahan had a conversation, and thereafter Edward V. Hanrahan held a Press Conference with members of the news media at 2600 South California Avenue, Chicago, Illinois concerning the events that occurred at 2337 West Monroe Street, Chicago, Illinois on December 4, 1969.

5. On or about December 11, 1969, and December 16, 1969, Richard Jalovec and Daniel Groth withheld from agents of the Internal Inspections Division of the Chicago Police Department written statements given by each

of the State's Attorney's Police Officers concerning his participation in the events of December 4, 1969 at 2337 West Monroe Street, Chicago, Illinois;

6. On December 8, 1969, Edward V. Hanrahan held a Press Conference with members of the news media in Chicago, Illinois concerning the events that occurred at 2337 West Monroe Street, Chicago, Illinois;

7. On December 10, 1969, in Chicago, Illinois, Edward V. Hanrahan, Richard Jalovec, Daniel Groth, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James Davis, Joseph Gorman, and George Jones gave false and misleading information concerning the events that occurred at 2337 West Monroe Street, Chicago, Illinois to the Chicago Tribune, which resulted in an exclusive article printed on December 11, 1969 by said Paper exclusively, which article was false and misleading;

8. On December 11, 1969, Edward V. Hanrahan and Richard Jalovec directed and arranged for, and Daniel Groth, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James Davis, Joseph Gorman, Robert Hughes and George Jones prepared and acted out for showing on local television an alleged re-enactment of the events that occurred on December 4, 1969 at 2337 West Monroe Street, Chicago, Illinois, which re-enactment was false and misleading and was shown on television that evening on Channel 2 in the City of Chicago;

9. On December 12, 1969, Edward V. Hanrahan held a Press Conference with members of the news media in Chicago, Illinois concerning the events that occurred at 2337 West Monroe Street, Chicago, Illinois on December 4, 1969;

10. On or about December 16, 1969, John P. Meade and John Mulchrone, at 1121 South State Street, Chicago, Illinois, prepared a list of questions and suggested answers which were to be shown to Sgt. Daniel Groth, which questions were conclusionary in nature and designed to elicit exculpatory answers and which answers were exculpatory and which questions and answers were designed to and did prevent a full disclosure of the true events occurring at 2337 West Monroe Street, Chicago, Illinois on December 4, 1969;

11. On December 16, 1969, John Mulchrone, John P. Meade, Richard Jalovec, Sheldon Sorosky, James Meltreger, Harry Ervanian, and Daniel Groth met at 1121 South State Street, Chicago, Illinois and discussed the aforesaid questions and answers prepared by Meade and Mulchrone, agreed to same, and then had said questions and answers read before a court reporter, as if they were an extemporaneous statement given by Groth, which was not the fact, and which Sgt. Groth thereafter signed;

12. Thereafter, also on December 16, 1969, at 1121 South State Street, Chicago, Illinois, John Mulchrone, John F. Meade, Richard Jalovec, Sheldon Sorosky, James Meltreger, Harry Ervanian and Daniel Groth further agreed to draft and use a uniform format for statements to be taken from the other State's Attorney's police officers involved in the December 4, 1969 incident, in which format said other State's Attorney's police officers were asked to affirm the Groth statement which contained reference to matters of which they had no knowledge;

13. Thereafter, also on December 16, 1969, Richard Jalovec, Sheldon Sorosky and James Meltreger counseled and advised the aforesaid other State's Attorney's police

officers of each question they were to be asked and advised them to so do, and each officer knowing the question he would be asked before he was examined gave a statement;

14. On December 17, 1969, John Sadunas issued a Chicago Police Department Crime Laboratory report which included a positive identification of two shot shells allegedly fired from a 12-gauge shot gun by an occupant of 2337 West Monroe Street, Chicago, Illinois, on December 4, 1969, which identification he knew, or should have known, to be false, inaccurate and not based upon an adequate firearms examination.

15. On December 17, 1969, in Chicago, Illinois, John Mulchrone prepared or caused to be prepared a false and misleading statement for release to the Press concerning the events occurring at 2337 West Monroe Street, Chicago, Illinois, on December 4, 1969;

16. On December 19, 1969, John Mulchrone improperly and prematurely terminated the Internal Investigations Division investigation then being conducted by the Chicago Police Department into the conduct of certain police officers on December 4, 1969 at 2337 West Monroe Street, Chicago, Illinois;

17. Between January 6, 1970 and January 21, 1970, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James Davis, Joseph Gorman, Daniel Groth and George Jones falsely testified before the Special Deputy Coroner of Cook County at an inquest into the deaths of Fred Hampton and Mark Clark, regarding shots that were allegedly fired at them by occupants of the first floor apartment at 2337 West Monroe Street, Chicago, Illinois;

18. Between January 8, 1970 and January 28, 1970, Daniel Groth, James Davis, George Jones, Joseph Gorman, Edward Carmody and John Ciszewski falsely testified before the January 1970 Cook County Grand Jury regarding shots allegedly fired at them by occupants of the first floor apartment at 2337 West Monroe Street, Chicago, Illinois;

19. On or about January 8, 1970, Edward V. Hanrahan caused to be presented before a Cook County Grand Jury evidence which he knew, or reasonably should have known, to be false and inflammatory in order to procure the indictment of Blair Anderson, Harold Bell, Verlina Brewer, Brenda Harris, Deborah Johnson, Ronald Satchel and Louis Truelock, on erroneous and unprovable charges;

20. On January 20, 1970, John Sadunas testified before the Special Deputy Coroner of Cook County, Illinois, at an inquest into the deaths of Mark Clark and Fred Hampton with respect to his positive identification of the two shot shells aforesaid, which testimony he knew, or should have known, to be false, inaccurate and not based upon an adequate firearms examination;

21. On or about January 20, 1970, John Sadunas had a long conversation with Thomas A. Hett, an Assistant State's Attorney of Cook County, Illinois, as a result of which he knowingly and wrongfully permitted his said December 17, 1969 report, which included a false identification of said two shot shells, to be used in evidence in a State Grand Jury proceeding then pending against the said persons against whom the said criminal charges were then pending, when he knew, or should have known, that his positive identification of the said two shot shells

was false, inaccurate and not based upon an adequate firearms examination, in violation of Chapter 38, Section 8-2 of the Illinois Revised Statutes of 1969, contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

/s/ Richard F. Balla,
Foreman
/s/ Barnabas F. Sears,
Special State's Attorney

APPENDIX B

People Ex Rel. Sears Et Al v. Power Et Al
No. 44586
In The Supreme Court Of Illinois
August 24, 1971

Per Curiam:

The parties in cases #44287, 44288, 44289, and 44348, which were orally argued in this Court on May 26 of this year, and in which our written opinion in the consolidated cases was filed on June 23rd, are again before us. The history of the proceedings preceding our earlier opinion are there detailed, and it is unnecessary to repeat them here.

The present action pending before us consists of a motion by the special prosecutor appointed by Judge Joseph Power of the circuit court of Cook County to present evidence to the special grand jury referred to in our earlier opinion. The motion requests leave to file a petition for original writs of *mandamus* and prohibition. The writ of *mandamus* is sought to expunge an August 10, 1971 order of Judge Power, and to compel the opening of a sealed envelope containing an indictment returned by the grand jury on June 25th. The writ of prohibition is requested to prohibit the judge and other named respondents from taking any further action to implement the August 10 order.

We take the unusual action of denying the motion for leave to file the petition for *mandamus* and prohibition and simultaneously resolving the issues there raised without permitting additional briefing of those issues or oral argument thereon. We do so because the parties in the earlier cases above referred to and those now named as movants and respondents are substantially identical. There is no dispute as to the salient facts which are, in our judgment, determinative of the issues in this proceeding. Several of those issues were thoroughly briefed and argued in the earlier cases. Those which were not involve only differing interpretations of our earlier opinion. As a result of the earlier arguments and the certified trial court records now on file in this Court, we are sufficiently advised regarding the facts and the legal issues so that further briefing or argument is unnecessary, and would serve only to delay resolution of those issues.

At the time our opinion in the cases above referred to was filed, no indictment had been returned by the special grand jury. Two days thereafter, an indictment and certain no bills were returned. They were not accepted and ordered filed by Judge Power, but instead were placed in envelopes which were then sealed and still remain in that condition with their contents unknown, pending resolution by the trial court of the questions relating to the integrity of the grand jury proceedings and prosecutorial conduct referred to in our June 23rd opinion. In that opinion we held the circuit court might examine the transcript of the grand jury proceedings and conduct *in camera* interviews with the grand jurors as a body.

On August 10 an order was entered by Judge Power finding that there were no transcripts of the grand jury proceedings on certain days when improprieties were alleged to have occurred, that evidence of what occurred on those and other occasions would have to be presented to the court, that the transcript would have to be examined, persons interviewed and examined, "material and evidence of this and other related causes" presented to the court, and that "in the best interest of justice" an *amicus curiae* should be appointed. The order appointed an *amicus*, authorized to employ an assistant of his choice, and empowered the *amicus* "to examine the transcripts of this Special Grand Jury Proceedings, interview and examine persons, material and evidence of this and other related causes * * *." The order further required the *amicus* to present on August 17 evidence and law pertinent to the issue of the propriety of the conduct of the special prosecutor before the grand jury. It is expunction of that order which is one of the objectives of the proposed *mandamus* writ.

The interpretation placed upon our opinion of June 23rd in case #44287 et al., insofar as it was thought to authorize appointment of an *amicus* to conduct the inquiry therein authorized, was incorrect. That opinion contemplated that any investigation of the integrity of the grand jury proceedings deemed necessary by the trial judge would be conducted by the Judge himself.

It is apparent from the transcript of the trial court proceedings occurring subsequent to our June 23rd opinion, that the trial court also interpreted that opinion as holding that the petitioners in the trial court, who alleged they were or might be defendants in unreturned indictments, had standing to make a pre-indictment challenge of the grand jury proceedings. In this interpretation the trial judge was in error. At the present time it is necessary to decide only that a prospective defendant is without standing to prevent the return of an indictment, except in cases in which the processes of the court have been abused.

As noted herein, the grand jury in question has, since our earlier opinion was filed, returned an indictment and no bills to the trial court, and these documents have been suppressed by the trial judge pending resolution of the challenge to the integrity of the grand jury proceedings. In view of the fact that this indictment and no bills have now been returned, we are of the opinion that the interests of justice will be best served by the trial judge opening and filing such indictment, and thereafter proceeding according to law.

APPENDIX C

MOTION TO STRIKE
Filed 10/4/71
People Of State Of Illinois v. Hanrahan Et Al
Criminal Division, Circuit Court Of Cook County
Case No. 71 CR 1791

Motion Of The State To Strike Paragraphs 1, 2, 3 And 4 Of The Motion Of Defendants Groth Et Al., And Paragraphs I And II Of The Motion Of Defendant Hanrahan To Dismiss The Indictment

Now come the People of the State of Illinois, by Barnabas F. Sears, Special State's Attorney of Cook County, and move the Court to strike Paragraph 1 (alleged Improper Conduct), Paragraph 2 (alleged Effect of Publicity), Paragraph 3 (alleged Improper Procedure in Drafting and Presenting Indictment), and Paragraph 4 (alleged Presence During Grand Jury Deliberations) of the Motion to Dismiss the Indictment filed by Defendants Daniel R. Groth, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James B. Davis, Joseph F. Gorman, George Jones, Richard Jalovec, John Sadunas, Charles Koludrovic, John P. Meade, and John Mulchrone, and to strike Paragraph I (alleged Improper Conduct) and Paragraph II (alleged Effect of Publicity) (and in addition to strike Hanrahan's adoption by reference of Paragraphs 3 and 4 of the Groth et al. Motion) of the Motion to Dismiss the Indictment filed by Defendant Hanrahan; and further respectfully move the Court to set the remaining grounds of said Motions (alleged

Failure to State an Offense, Alleged Illegal Delay, alleged Violation of Rights re Federal Testimony, and alleged Running of the Statute of Limitations) for disposition at an early date.

In support of this Motion to Strike, the People of the State of Illinois say as follows:

1. Paragraph 1 of the respective Motions to Dismiss the Indictment is based on allegations of improper conduct by the Special State's Attorney and the Special Assistant State's Attorneys. The allegations are derived from the Statement of Grand Jurors Clara Goucher and the Affidavits of Grand Jurors Murtaugh, Scott and Zichittella. That Statement and those Affidavits cannot, as a matter of Law, be considered by the Court, the same having been obtained by Defendants and their Attorneys in violation of the requirement that matters occurring before a Grand Jury shall forever be secret, excepting only when (pursuant to Section 112-6 of the Illinois Criminal Code) a Court directs disclosure (other than the deliberations and vote) in the interests of justice. Elementary judicial procedure requires that the Court enter a written Order to that effect, with specific findings showing the necessity for disclosure and setting forth the nature and extent of disclosure.

2. The Defendants obtained the Goucher Statement and the affidavits at a time when no written Order had been entered by this Court in Case No. 71-1791 nor by the Court in the separate December 1970 Special Grand Jury Proceedings entitled Case No. 70 S.G.J. 3. The Defendants base their right to obtain the same upon certain statements made on August 31, 1971 by the Honorable Joseph Power, Presiding Judge, in Case No. 70 S.G.J. 3;

however, no written Order was entered by him on that date or subsequently, and the Clerk's Record Sheets, entitled "Memorandum of Orders" in 70 S.G.J. 3 (copies attached hereto as Exhibit A) show no entry of any order whatsoever on August 31, 1971. No proper Order having been entered at the time of the obtaining of the Statement and Affidavits, the same should be stricken. In addition, the Affidavits of Murtaugh and Scott violate the requirement that no one shall disclose the deliberations and vote of any Grand Juror, in that:

(a) The Murtaugh Affidavit states, "The jurors voted to add his (Conlisk's) name to the indictment."

(b) The Murtaugh Affidavit further states "Judge Power told me all I could do was express my concern in the grand jury room by what I said and how I voted. I did that."

(c) The Scott Affidavit purports to affirm the truth of every statement in the Murtaugh Affidavit, including the foregoing statements.

The foregoing public disclosure of the deliberations and votes of the Grand Jurors Murtaugh and Scott is absolutely prohibited by Illinois Law and, for that additional reason, the Affidavits of Murtaugh and Scott are required by Law to be stricken.

3. Even if the Goucher Statement and the Affidavits had been properly obtained, and even if the Statement and Affidavits were properly before this Court, nevertheless presently existing Illinois Law provides that such Statements and Affidavits cannot, as a matter of Law, be used to impeach an Indictment which has been duly returned in open Court and which said Grand Jurors sat by in silence and saw returned. In the case at bar, the

Special Grand Jury first presented the Indictment to the Presiding Judge in open Court in the late afternoon of June 24, 1971, at which time the Presiding Judge stated that no Court Clerk was available and asked that the Grand Jury return the next day (See Transcript of Judge Power Hearing 6/24/71 attached as Exhibit B). On June 25, 1971, the Special Grand Jury again presented the Indictment to the Presiding Judge in open Court, and the Presiding Judge accepted it and directed that it be sealed and filed, and that the file be impounded (See Transcript of Judge Power Hearing 6/25/71 attached as Exhibit C). On both occasions the Special Grand Jury was present in open Court; and, except for the oral statements of the Foreman in presenting the Indictment to the Presiding Judge, no member of the Special Grand Jury uttered a word. Under these circumstances, the Goucher Statement and the Affidavits (Murtaugh, Scott, and Zichittella) are, as a matter of Law, of no effect.

4. Even if the Goucher Statement and the Affidavits had been properly obtained, and even if the Statement and Affidavits were properly before this Court, nevertheless Paragraph 1 (alleged Improper Conduct) of Defendants' (Groth et al.) Motion to Dismiss, and Paragraph 1 (alleged Improper Conduct) of Defendant Hanrahan's Motion to Dismiss, are insufficient as a matter of Law, on the following grounds:

(a) The Law is that an Indictment, returned by a regularly constituted grand jury, if valid on its face, is presumed to have been voted and returned properly and is legally sufficient to require the defendants to go to trial on the merits of the charge; and, moreover, such an Indictment legally satisfies the requirements of the Due Process Clause of the

United States Constitution, the Equal Protection Clause of the United States Constitution, the Due Process Clauses of the Illinois Constitutions of 1870 and 1970, the Grand Jury Clauses of the Illinois Constitutions of 1870 and 1970, and the requirements of Section 112-4(c) of the Illinois Criminal Code.

(b) The Defendants' Motions (taken as they stand, and excluding the improper Statement and Affidavits) fail, as a matter of Law, to rebut the foregoing presumption. The purported specification of alleged Improper Conduct (at Pages 4-7 of the Motion of Groth et al., and at Pages 2-4 of the Hanrahan Motion) are (as they must be, since Movants do not themselves know the facts as regards what took place in the Grand Jury Room) no more than unsworn summaries, of no legal weight.

(c) The Defendants' Motions (taken as including the Statement and Affidavits) fail, as a matter of Law, to rebut the foregoing presumption, in that:

(i) The Transcript of Proceedings of the Special Grand Jury (covering the period from the date of the impanelling on 12/7/71 through the last Session on 6/30/71) (said Transcript in its entirety being incorporated herein as Exhibit D) shows that the Goucher Statement and the Affidavits (Murtaugh, Scott, and Zichittella) are false in the following particulars (the following disclosures being made by the Special State's Attorney solely in the performance of his duty):

(aa) The Murtaugh Affidavit states under oath that the Special State's Attorney, in questioning the Witness Mulchrone, refused "to let Capt Mulchrone tell us what had

happened." The Murtaugh Affidavit is compared in detail with the Special Grand Jury Transcript in Sealed Exhibit E, attached hereto and made part hereof (entitled "Table of Comparison"). The Table of Comparison shows that the Witness Mulchrone, when questioned on 2/25/71 and 3/1/71 as regards his prior testimony before the Federal Grand Jury, frequently did not give responsive answers and frequently sought to testify as to matters not germane to the question. The Grand Jury Transcript shows *(contrary to the Murtaugh Affidavit)* that Mulchrone stated to the Special State's Attorney, "I am not complaining about the way you are interrogating." The Transcript shows *(contrary to the Murtaugh Affidavit)* that the Witness Mulchrone volunteered to furnish two large Folders of Reports of the Intelligence Division of the Chicago Police Dept. with regard to Black Panthers; that the same were received and marked as Grand Jury Exhibits; and that many of the Reports were read to the Jury. The Transcript shows *(contrary to the Murtaugh Affidavit)* that the Grand Jurors asked the Witness Mulchrone numerous questions and that the Witness responded at length.

(bb) The Murtaugh Affidavit states under oath that "it was off the record" when the Special State's Attorney "summarized what each witness who had testified before the Federal Grand Jury would say and why we should not call these witnesses in to testify before us." The Murtaugh Affidavit makes it appear that the

Special Grand Jury wanted to hear additional Witnesses who had testified before the January 1970 Federal Grand Jury and who were not called as Witnesses before this Grand Jury. A review of the entire Transcript of this Grand Jury (Exhibit D) shows that (in the period from 12/14/70 through 4/15/71) this Grand Jury heard more relevant Witnesses than did the January 1970 Federal Grand Jury, excepting only those Policemen who were invited to testify before this Grand Jury and who declined the invitation. In addition, a review of certain further Transcripts of Closed Hearings in Judge Power's Courtroom shows that the matter of the so-called Additional Federal Witnesses was raised for the first time by Judge Power, at a time when this Grand Jury had already concluded its hearing of Testimony, and at a time when Mr. Hanrahan had (after remaining silent since his receipt of an Invitation Letter dated 12/18/70) first advised this Grand Jury of his desire to testify. The following review shows *(contrary to the Murtaugh Affidavit)* that the Special State's Attorney presented the matter fully to the Grand Jury (on the record), and that the Grand Jury then voted not to hear the so-called Additional Federal Witnesses, excepting only that Mr. Hanrahan was to be called, provided that he sign an Immunity Waiver: The Special Grand Jury concluded its hearing of Testimony on 4/15/71 (see Exhibit D at 4/15/71). It received presentation of an Indictment on 4/20/71 and of

another Indictment on 4/21/71; and it voted a True Bill on the Indictment on 4/21/71. On the morning of 4/22/71, Mr. Hanrahan caused a Letter to be delivered to the Special State's Attorney (see Exhibit D at 4/27/71 et seq.), asking to appear as a Witness. On the afternoon of 4/22/71, the Grand Jury convened to receive presentation of further Counts of the Indictment, when Judge Power summoned the Grand Jury to his Courtroom, and directed the Special State's Attorney to call additional Witnesses who had appeared before the Federal Grand Jury, permitting no discussion of the question whether their testimony was relevant or necessary, and ordered the Grand Jury to hear those Additional Federal Witnesses (see Transcript of that Closed Court Session, attached as Sealed Exhibit F). Judge Power repeated his direction to the Special State's Attorney in open Court on 4/26/71 (the Grand Jurors not being present), at which time the Special State's Attorney tendered an Exhibit to Judge Power, listing the Additional Federal Witnesses whose testimony was not deemed relevant or necessary; and Judge Power declined to receive the Exhibit (see Transcript of that Court Session attached as Exhibit G). Judge Power then held the Special State's Attorney in contempt for not calling the so-called Additional Federal Witnesses (see Exhibit G). Immediately after that Court Session and on 4/26/71, the Grand Jury convened its session. The Grand Jury Transcript (see Sealed Exhibit D) shows

(directly contrary to the Murtaugh Affidavit) that the Special State's Attorney then read (on the record) the abovementioned Listing of Additional Federal Witnesses to the Grand Jury, following which there was a discussion (on the record) by the Grand Jurors, concluding with a vote of the Jurors (on the record) that no additional Witnesses were to be called other than Mr. Hanrahan, provided he sign an Immunity Waiver. In addition, this Court will take judicial notice of the fact that the abovementioned Contempt Ruling was appealed directly to the Illinois Supreme Court; and that the Illinois Supreme Court on 6/23/71 held, in its Docket No. 44287 et seq., that the Presiding Judge erred in so directing the Special State's Attorney, and reversed the Contempt Ruling.

(cc) The Murtaugh Affidavit states under oath that the Special State's Attorney "took the Panthers before Judge Power to ask Judge Power to give the Panthers immunity from prosecution, but Judge Power refused." The Grand Jury Transcript (see Sealed Exhibit D) shows *(directly contrary to the Murtaugh Affidavit)* that the Special State's Attorney and a Special Assistant State's Attorney questioned three Panther Witnesses on 3/2/71 and 3/3/71; that when those Witnesses refused to answer certain questions for the Grand Jury, the Special State's Attorney commenced proceedings before Judge Power, pursuant to instructions from the Grand Jury Foreman, asking that Judge Power direct the Witnesses to testify.

The Transcripts of Closed Court Sessions before Judge Power on 3/3/71 and 3/29/71 (see Sealed Exhibit H) show *(directly contrary to the Murtaugh Affidavit)* that the Special State's Attorney asked Judge Power to direct the Panther Witnesses to testify; and that Judge Power at the Closed Court Session on 3/29/71 with the Special State's Attorney and the Grand Jurors present, stated that he would not direct the Panther Witnesses to testify (see Sealed Exhibit H, namely, Closed Court Sessions of 3/3/71 and 3/29/71).

(dd) The Goucher Statement (unsworn) asserts that the Special State's Attorney "would not let Mulchrone explain a thing . . ." The Grand Jury Transcript (see "aa" above) is *contrary to this assertion by Mrs. Goucher* and shows it to be false.

(ee) The Goucher Statement (unsworn) asserts that the Special State's Attorney said "I run this grand jury." The Goucher Statement is compared with the Special Grand Jury Transcript in Sealed Exhibit I, attached hereto and made part hereof (entitled "Table of Comparison"). The Grand Jury Transcript for 2/25/71 shows *(contrary to the Goucher Statement)* that the Witness Mulchrone, during his testimony, volunteered to hand his Folders of Intelligence Reports to the Jury Foreman; and, when the Special State's Attorney asked the next question, the Witness Mulchrone interrupted and asked for a response from the Foreman, following which the Special State's Attorney said

to the Witness "I'm conducting this examination, Captain, and not you." The Grand Jury Transcript for 3/1/71 shows that on that date the Witness Mulchrone said he intended to address the Foreman and the Jurors and not the Special State's Attorney; and that the Witness then tendered the Intelligence Reports to the Foreman and not to the Special State's Attorney. At that time, the Special State's Attorney reminded the Witness that he was to answer questions put by the Special State's Attorney; and the Special State's Attorney asked the Foreman to instruct the Witness to answer questions put by the Special State's Attorney, following which the Foreman so instructed the Witness. The Grand Jury Transcript for 4/26/71 shows *(directly contrary to the Goucher Statement)* that, when the matter of the so-called Additional Federal Witnesses came up, the Special State's Attorney presented the matter to the Grand Jury and asked for its instructions, stating that he was bound to follow their instructions "because you are running the show, not me or Judge Power or anyone else—you are above all officials, however high, however low." (See Sealed Exhibit D at 4/22/71, pp. 73-109).

(ii) The Murtaugh Affidavit is, in addition, false in the following respects with regard to the presentation of the Indictment and the action of the Grand Jury thereon. The Murtaugh Affidavit states under oath that the re-voting of the Indictment on 6/24/71 was "not properly voted." The Transcript of the Judge Power Hearing 6/25/71 shows that the Judge asked

about the dates of the voting of the Indictment; and the Special State's Attorney stated that it had been voted earlier and re-affirmed yesterday by the proper number of votes. The Grand Jurors were present in Court on 6/25/71 and there is no record of Murtaugh saying the Indictment was "not properly voted" on 6/24/71. In addition, the Grand Jury Transcripts for 6/24/71, 6/25/71, and 6/30/71 (attached as Sealed Exhibit J) show *(contrary to the Murtaugh Affidavit)* that on 6/24/71 the Grand Jury, acting on its own and with no presentation by the Special State's Attorney as regards re-voting the Indictment, nevertheless did re-vote the Indictment; and that on 6/25/71 and 6/30/71 the Grand Jurors other than Murtaugh referred to the Indictment as having been voted twice and as having been re-voted. All the Grand Jury Proceedings on 6/24/71, 6/25/71, and 6/30/71 (other than the Jurors' deliberations and votes) were transcribed by a Court Reporter, and there is no record of Murtaugh challenging those statements by other Jurors (the foregoing being here disclosed by the Special State's Attorney solely in the performance of his duties).

(iii) The Goucher Statement and the Murtaugh Affidavit, having falsely stated the foregoing material facts, contrary to the Transcript of the Grand Jury Proceedings, are of no legal weight sufficient to rebut the presumption (see "a" at Page 5 of this Motion, above) that an Indictment, returned by a regularly constituted Grand Jury, if valid on its face, is presumed to have been voted and returned properly and is legally sufficient to require the Defendants to go to trial on the merits of the charge.

(iv) The so-called Affidavits of Scott and Zichittella, purporting to affirm the truth of everything in the Murtaugh Affidavit, are, as a matter of Law, of no weight, in that it is manifestly not possible for separate affiants to affirm the truth of everything stated by another person in an 11-page Affidavit with regard to a complex matter extending from 12/7/70 through 6/30/71. Even if it were legally possible for Scott and Zichittella to purport to affirm the truth of everything in the Murtaugh Affidavit, their so-called Affidavits are then false in the same particulars as the Murtaugh Affidavit, contradicted by the Special Grand Jury Transcript; and, as such, their so-called Affidavits are of no legal weight sufficient to rebut the abovementioned presumption.

(v) The Goucher Statement and the Affidavits (Murtaugh, Scott, and Zichittella) are, in addition, directly controverted by certain Affidavits in virtually all respects as to each fact asserted therein with regard to the Grand Jury Proceedings and more particularly as to the facts asserted therein with regard to the Grand Jury Proceedings of 4/20/71 and 4/21/71. These certain Affidavits consist of Exhibits K-1 through O, attached hereto and made a part hereof, namely, the Affidavits of the Special State's Attorney and of the Special Assistant State's Attorneys (see Sealed Exhibits K-1 through O), the disclosures therein being made by the Special State's Attorney and the Special Assistant State's Attorneys solely in the performance of their duties.

(vi) The Goucher Statement and the Affidavits (Murtaugh, Scott, and Zichittella) having already been shown to be false in material re-

spects as compared with the Special Grand Jury Transcript, and in addition being controverted by the foregoing additional Affidavits (Sealed Exhibits K-1 through O) are, as a matter of Law, entirely insufficient to rebut the presumption to the effect that the Indictment in this Cause No. 71-1791, returned by a regularly constituted Special Grand Jury, and valid on its face, is presumed to have been voted and returned properly and is legally sufficient to require the Defendants in this Cause to go to trial on the merits of the charge.

5. Paragraph 1 of the respective Motions to Dismiss the Indictment ask the Court, on the basis of the Goucher Statement and the Affidavits of Murtaugh, Scott, and Zichittella, and on the basis of certain Newspaper Articles, to direct that there be an open court hearing on the issue of alleged improper conduct of the Special State's Attorney and the Special Assistant State's Attorneys with regard to the Indictment in this Case No. 71-1791, at which hearing "all of the grand jurors and other persons who have knowledge of relevant facts should be called as witnesses" (Brief of Groth et al., p. 12). The Law is that such an investigation into the conduct of a prosecutor should never, under any circumstances, be instituted except on the basis of *credible, detailed, sworn* and *persuasive* averments by witnesses as to the irregularities complained of, which must be shown to have resulted in substantial injustice to the defendants (Chapter 38, Ill. Rev. Stat. Sec. 114-1-5); for to embark upon such an investigation, would divert and turn back the course of a criminal trial from a trial of the Defendants to a trial of the grand jury and the prosecuting officers,

and do violence to salutary rules strongly rooted in our jurisprudence which, without sacrificing any of the fundamental safeguards, look to the speedy and practical administration of criminal justice, with due regard to the just rights of society. Because matters shown of record in the Transcript of the Special Grand Jury Proceedings, and the other Court Documents, and the additional Affidavits filed herewith, conclusively impeach the Goucher Statement and the Affidavits (Murtaugh, Scott, and Zichittella), the Defendants, as a matter of Law, have not made a sufficient showing to warrant the hearing sought into the conduct of the Special State's Attorney and the Special Assistant State's Attorneys before the Grand Jury.

6. Paragraph 2 of the Motion of Groth et al. and Paragraph II of the Hanrahan Motion are also based, among other things, on allegations that the extensive publicity to which the Grand Jury was allegedly exposed, coupled with the alleged improper conduct, operated to invalidate the Indictment. These allegations are based on Exhibits 5, 6 and 7 to Defendants' Groth et al. Motion, namely, News Articles dated April 25, 27 and 23, 1971; and on Group Exhibit No. 2 of the Hanrahan Motion. This ground of said Defendants' Motion is, as a matter of Law, of no legal effect.

7. Paragraph 3 of the Motion of Groth et al. and Paragraph I of the Hanrahan Motion are also based on the assertion that it was invalid, as a matter of Law, for the Special State's Attorney to prepare and present the Indictment to the Grand Jury "before 12 members of the grand jury had concurred that the evidence before them constituted probable cause that the defendants had committed the offense alleged in the indictment." This is an incorrect statement of Illinois Law in that:

(a) Illinois Law is clearly to the effect that, particularly in a complex case, it is the duty of the State's Attorney to prepare a draft of an indictment for consideration by the grand jury; and that, the same having been read to the grand jury, and the grand jury having thereafter deliberated and voted it to be a True Bill in closed session, is a valid indictment.

(b) The Defendants' Motion cites Section 112-4 (c) of the Illinois Criminal Code as prohibiting the State's Attorney from preparing a draft of an indictment before the grand jurors' vote that there is probable cause therefor. This is, as a matter of Law, a misreading of the Statute.

8. Paragraph 4 of the Motion of Groth et al. and Paragraph 1 of the Hanrahan Motion are also based on the allegation that "the Special State's Attorney and perhaps one or more of his Assistants were present in the grand jury room during the deliberations of the grand jury," in alleged violation of the Defendants' rights under the United States Constitution, the Illinois Constitutions of 1870 and 1970 and the provisions of Section 112-6(a) of the Illinois Criminal Code. This allegation is, as a matter of Law, of no legal effect in that:

(a) Defendants make no showing whatsoever in support of their assertion that anyone other than Grand Jurors were present in the Grand Jury Room during its deliberations and vote.

(b) The Defendants' Attorneys have several times made this assertion during argument to the Court but have produced no evidence whatsoever supporting such assertions.

(c) In addition, the Court Reporter for the Special Grand Jury transcribed all discussion in the Grand Jury Room on the dates of June 24 and 30, 1971, on which dates the Grand Jury re-voted the Indictment and voted three No Bills; and that Tran-

script (Sealed Exhibit J) shows that the Special State's Attorney and the Special Assistant State's Attorneys were never in the Grand Jury Room during the deliberations and votes of the Grand Jury.

Wherefore, the People of the State of Illinois, by Barnabas F. Sears, as Special State's Attorney of Cook County, move the Court to strike Paragraph 1 (alleged Improper Conduct), Paragraph 3 (alleged Effect of Publicity), Paragraph 3 (alleged Improper Procedure in Drafting and Presenting Indictment), and Paragraph 4 (alleged Presence During Grand Jury Deliberations) of the Motion to Dismiss the Indictment filed by Defendants Daniel R. Groth, Raymond Broderick, Edward Carmody, John Ciszewski, William Corbett, James B. Davis, Joseph F. Gorman, George Jones, Richard Jalovec, John Sadunas, Charles Koludrovic, John P. Meade, and John Mulchrone, and to strike Paragraph I (alleged Improper Conduct) and Paragraph II (alleged Effect of Publicity) (and in addition to strike Hanrahan's adoption by reference of Paragraphs 3 and 4 of the Groth et al. Motion) of the Motion to Dismiss the Indictment filed by Defendant Hanrahan; and further respectfully move the Court to set the remaining grounds of said Motions (alleged Failure to State an Offense, alleged Illegal Delay, alleged Violation of Rights re Federal Testimony, and alleged Running of the Statute of Limitations) for disposition at an early date.

Dated: October 4, 1971

Respectfully submitted,
The People Of The State Of Illinois
By /s/ Barnabas F. Sears
Special State's Attorney,
Cook County, Illinois

APPENDIX D

SUMMARY OF PROCEEDINGS
From February 2, 1972 To Date (April 25, 1972)

People Of State Of Illinois v. Hanrahan Et Al
— Criminal Division, Circuit Court Of Cook County
Case No. 71 CR 1791

Feb. 2, 1972 — Judge Romiti. Parties Present. Waiver of Appearance by Meade, Ciszewski, Davis, Jones, Groth, Carmody. Remaining 4 Grounds of Defendants' Motions to Quash and Dismiss Indictment are denied. Court Order of October 22, 1971 is expunged. Cause is continued to 2-3-72 for Arraignment.

Feb. 3, 1972 — Judge Romiti. Parties Present. Motion by Defendant Hanrahan (to Vacate Order of February 2, 1972) is denied. All Defendants are arraigned and waive reading of the Indictment and enter Pleas of Not Guilty.
Written Demand for Trial is filed by Jalovec.
Motions for Pre-Trial Discovery are filed by Defendants Jalovec, Koludrovic, Sadunas.

FOOTNOTE: Reference is made to the Certified Copy of the 8-Page "Memorandum of Orders" filed with this Court by Respondent. That Form is provided for by Rule of the Circuit Court of Cook County, Illinois, and it is commonly called the "Trial Court Half-Sheet." It is used by the Trial Judge's Clerk in making entries of Motions and Court Orders. This printed Appendix is based upon the Certified Copy of the "Half-Sheet" in this Cause. It is not represented that the printed Appendix is a verbatim Transcript of the Half-Sheet, the same being impossible because of the numerous abbreviations used by the Clerk (such as "PP" for "Parties Present," and "M" for "Motion," and so on).

	The following Schedule is set for all Pre-Trial Motions by Defendants (including Motions for Pre-Trial Discovery): All Motions to be filed by 3-1-72. All Objections and Answers to Motions to be filed by 3-20-72. Hearings on all such Motions is set for 3-27-72.
Feb. 7, 1972	Judge Romiti. Defendant Hanrahan's Motion for a Bill of Particulars is filed and set for 2-8-72.
Feb. 8, 1972	Judge Romiti. Defendant Hanrahan's Motion for Bill of Particulars is continued to 2-9-72.
Feb. 9, 1972	Judge Romiti. Parties Present. Motion of Defendant Hanrahan for Bill of Particulars is held in abeyance until 3-27-72, according to schedule.
March 1, 1972	Received and filed in Clerk's Office: Motion of Defendant John P. Meade and John F. Mulchrone to Amend Indictment is filed. Motion to Suppress Testimony of Defendant John Meade is filed. Motion to Suppress Testimony of Defendant John F. Mulchrone is filed. Received and filed in Clerk's Office: Motion (of Defendants Groth et al) to Suppress Testimony. Memorandum in Support. Motion (of Defendants Jalovec, Groth et al) for Bill of Particulars. Motions (of Defendants Hanrahan, Meade, Mulchrone, Groth et al) for Pre-Trial Discovery. Motions (of Defendants Hanrahan, Jalovec, Groth et al) to Amend Indictment.

Received and filed in Clerk's Office: Motions of the People of the State of Illinois for Pre-Trial Discovery from each Defendant (14 separate Motions).

March 2, 1972 — Received and filed in Clerk's Office: Motion by Koludrovic and Sadunas to Suppress Testimony, Memorandum in Support, Motion of Koludrovic and Sadunas to Amend Indictment.

March 20, 1972 — Received and filed in Clerk's Office: State's Objections to Defendants' Motions to Amend Indictment. State's Answer to Motion of Groth et al to Suppress. State's Answer to Motion of Sadunas and Koludrovic to Suppress. State's Objections to Defendants' Discovery Motions. State's Objections to Motion of Defendants Jalovec et al for Bill of Particulars. State's Objections to Motion of Defendant Hanrahan for Bill of Particulars. State's Report of Status of Pre-Trial Discovery as of March 20, 1972, including State's List of Intended Witnesses for Trial.

March 23, 1972 — Received and filed in Clerk's Office: List of Trial Witnesses of Defendants John P. Meade and John Mulchrone.

March 27, 1972 — Judge Romiti. Parties Present. Motion of Defendants Groth et al is filed for Leave to File Instanter an attached Motion to Dismiss Indictment (because of Improper Selection of Grand Jurors). Motion of State objecting to said Motion is filed. State files Amendments to

its Answers to Motions to Suppress by Mulchrone, Meade, Sadunas and Groth et al. State's Motion is filed to Strike Names of Grand Jurors from Defendants Meade and Mulchrone's List of Witnesses and for Order restraining and prohibiting all Defendants, their Counsel and any other person from interviewing Grand Jurors. Defendants given to April 7, 1972 to respond. Date of April 11, 1972 set for Arguments (as to Striking Names of Grand Jurors and as to Motion for Leave to File Motion to Dismiss Indictment).
Defendants Koludrovic and Sadunas enter Demand for Trial.
Hearing is held on Defendants' Motions to Amend Indictment and Defendants' Motions for Bills of Particulars.

April 11, 1972 Judge Romiti. Parties Present. Waivers of Appearance by Sadunas, Koludrovic, Ciszewski, Gorman, Groth, Corbett, Broderick and Davis. State's Motion (to Strike Names of Grand Jurors from Defendants Meade and Mulchrone List of Witnesses) is denied. Groth et al Motion (for Leave to File a Motion to Dismiss Indictment because of improper Selection of Grand Jurors) is denied.
Ruling on Defendants' Motions for Particulars and to Amend Indictment is continued to 5-2-72. State to continue compliance with Discovery for Defendants and report on 5-2-72.
Tentative Date for Trial is set at June 12, 1972.

APPENDIX E

GRAND JURORS' STATEMENTS ATTACHED TO LIST OF WITNESSES FILED 3/23/72 BY DEFENDANTS MEADE AND MULCHRONE

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Statement of Phyllis Hymon given to John P. Coghlan on September 1, 1971

My name is Phyllis Hymon. I live at 950 E. 86th St., Chicago.

In my opinion Mr. Sears did a very good job. I think he gave everybody an opportunity to express themselves and presented evidence fairly.

We felt that Mrs. Goucher disliked Mr. Sears very much. I don't think it was due to the way he presented the evidence; it was just that she disliked him.

We knew before April 20, 1970 that we were going to vote on indictments but I don't remember how many days it was before April 20th that we knew this. We didn't know what charges to prepare; we thought it was the customary thing for the lawyers to prepare indictments. The first time we knew what the charges would be was when Mr. Sears read the indictment to us on April 20th.

One of the jurors asked Mr. Sears why there was no murder indictment and he said he didn't feel a murder indictment was necessary. He said that in his opinion we could take a vote. We decided not to vote on a murder indictment.

We voted no bills on April 20th, 1971 and then recessed for the day.

On April 21, 1971 Mr. Sears did things a little different. On the 20th he was being considerate of the jury and gave us all the indictments at once in a package. On the 21st of April he explained and read each indictment one by one and had us vote on one indictment at a time. After each of six indictments were voted true bills Mr. Sears would come in when we told him we had voted a true bill and he would read and explain the next indictment before we voted. I'm not sure exactly but I think there were a couple of indictments voted together at the same time without Mr. Sears coming in between.

On the 21st of April we voted one big conspiracy indictment and five indictments against Hanrahan.

I remember Capt. Mulchrone. He testified twice. In general he made a poor impression on me because he refused to let Sears cross examine him. He refused to answer questions directly and insisted on explaining things and getting off the subject. I think Mr. Sears was entirely proper in the way he tried to limit Mulchrone. Sears frequently had to tell Mulchrone to just answer the question. As far as I'm concerned I know Mr. Sears never said "I run this grand jury." It was either "I run this investigation" or "I run this cross examination" that Mr. Sears said. I know it was definitely not "I run this grand jury."

It was one of the times that Sears had set down to let Mulchrone express himself that Sears started laughing at Mulchrone. I think Sears was entirely proper in laughing because Mulchrone was just evading Mr. Sears' questions. I think some of the jurors then laughed too.

The only things I remember were off the record when the prosecutors were with us was when Sears would give legal opinion or when a juror would ask to go off the record to have Sears explain a legal term. Sears didn't go off the record too much when we were seeing things or hearing witnesess. The reason the court reporter didn't take down Mr. Cedarquist's comments on the movies was because the room was dark. Actually Mr. Cedarquist didn't have much to say other than to tell us what we were looking at and in case a juror didn't understand he would raise a shade or turn the lights on to point things out on the mock-up.

I really think Sears did a good job. He seemed to be well prepared on the evidence and for cross examining witnesses. He is a very believable person. If somebody didn't believe him he would go out of his way to help the juror. A good example of where Sears helped us was on the immunity waivers. Hanrahan was trying to pull a fast one by telling us immunity waivers were not necessary. Sears said this was bunk and he explained to us that the police were the real targets of his investigation and that if we let any police get away without giving an immunity waiver the indictments we were going to vote against the police would never hold up. Sears was very helpful to us jurors in matters like these.

I don't think we were improperly influenced by Barnabas Sears; if we had been influenced, we would have voted more indictments.

That's all I can think of and there's nothing more I can think of adding.

When you came to my home you told me your name was John Coghlan and that you were Capt. Mulchrone's

lawyer and also Sgt. Meade's lawyer. You told me you didn't care who I helped or who I hurt so long as I told you the truth. After reading this six page statement including the next page and . . . I told you I will sign it. You also told me Judge Power had authorized you to talk to us jurors provided you did not ask what went on when we were deliberating by ourselves or what my vote was.

Statement of Dorothy Lewis given to John P. Coghlan at 8818 S. Morgan Street, Chicago

My name is Dorothy Lewis. I am one of the grand jurors who served on the investigation of the deaths of Fred Hampton and Mark Clark.

In my opinion Mr. Sears did a grand job. I have nothing but admiration for Mr. Sears. He was very helpful. Many things that we jurors did not understand he would be helpful.

We jurors didn't know anything about what indictments to bring so we relied heavily on Mr. Sears' recommendations.

Mr. Sears was very careful not to say anything improper. I couldn't tell how he felt.

As far as Mulchrone was concerned he was OK. I don't remember just what the laughing trouble was between Sears and Mulchrone.

Sears was very helpful about the immunity waiver business with Hanrahan. It was just like you showed me in Phyllis Hymon's statement.

Mrs. Goucher is wrong where she says Sears was going off the record all the time. Actually the main time we were off the record was when Mr. Cedarquist pointed things out in the movies and told us what was important and what was not important.

I felt it was necessary that Mr. Sears help us by explaining what evidence was important and what evidence was not important. I trusted Mr. Sears very much and his views on the evidence were very important to me. He is the kind of man you can believe or trust. He is very capable and experienced.

On April 20, 1971 we voted no bills only. On that day Mr. Sears had said nothing but just gave us a package of indictments to vote on. All were no bills.

On April 21 Sears came in and said that he wasn't going to make the same mistake today that he did yesterday. He did things different. The newspaper reports said Mr. Sears talked for 90 minutes but I don't think it was more than thirty or forty-five minutes but I don't remember what was said. In any event we then voted and it was a true bill.

You told me your name was John Coghlan and that you were John Mulchrone's and John Meade's lawyer. You said you didn't care who I helped or who I hurt so long as I tell the truth. I have told the truth and I will sign this three page statement because it contains all I told you about the grand jury and all I remember and it's true.

Statement of Helen J. Doering given to John P. Coghlan at 5101 West 24th Street, Cicero, Illinois on September 8, 1971

My name is Helen J. Doering. I was one of the grand jurors who investigated the shooting of Fred Hampton and Mark Clark.

I did not hear Cedarquist or Collins or anybody else say "If this is the type of police dept. we have we're all in serious trouble" nor anything like that.

I thought all witnesses were cooperating. I thought the attorneys did a good job. I don't think Mr. Sears or the other attorneys influenced me at all.

On April 20th we voted 13 No Bills. I don't remember if Mr. Sears came in between the time we voted the first no bill and the 13th. I don't remember any such statement as "I won't make the same mistake today that I made yesterday," made by Sears on the 21st of April or any other day.

If we had investigated the Black Panther party we might have been there for two years. We jurors didn't know how we could go about investigating the Black Panther Party.

I didn't see anything improper on Mr. Sears' part. I regarded Mr. Sears' cross examination of Mulchrone, Hanrahan and Jalovec as proper.

When Savage cross examined Maria Fisher he was perfectly normal. It was trying for everyone.

You told me your name was John Coghlan and you were Capt. Mulchrone's lawyer.

After reading this two-page statement and finding it is true I will sign page 2 and put my initials on page 1.

APPENDIX F

EXCERPT FROM STATE'S RESPONSE (Filed 10/14/71) TO HANRAHAN REPLY (Filed 10/9/71)

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NOTE: This appears in the Record on file in the United States Supreme Court at R. 3 (Documentary Exhibits) as Documentary Exhibit "U" at Pages 22-23. This is disclosed by the Special State's Attorney solely in the performance of his duties.

31. Hanrahan Item #31 states his argument that it was the duty of the Special State's Attorney to cause the Special Grand Jury to be called before 10/15/70; and that it was his duty to present evidence to a Special Grand Jury so convened of possible violations of Illinois Law by the Surviving Panther Occupants who were in the Apartment on 12/4/69; and, that his failure to do so was a "dereliction" which produced a "one-sided" investigation, requiring quashing of the Indictment in this Case No. 71-1791. STATE'S RESPONSE: This is not what Witness Hanrahan told the Special Grand Jury. Special Assistant State's Attorney Cedarquist questioned Witness Hanrahan with regard to this subject matter at SGJ Transcript 5/19/71 Pages 70-77. The questions related to the Testimony given by Hanrahan to the Federal Grand Jury on 5/4/70, to the effect that, if the 1/30/70 Indictment of the Surviving Occupants was dismissed, "I feel that there are other statutes that may

have been violated and I intend fully to call that to the attention of the (County) grand jury, as I believe it's my obligation to do." Hanrahan admitted giving that Testimony and admitted that "I presented no other matters to any (County) grand jury within the four terms regarding this incident" (8GJ Trans. 5/19/71 Page 72). And Hanrahan told the Special Grand Jury "I did not subsequently present any of these matters to a (County) grand jury because of my judgment, my professional judgment made after consultation with the other senior members of my office that we could not effectively seek an indictment or expect to obtain any conviction with reference to this matter primarily because of the details that were reported in the federal grand jury report, specifically with relation to the failure to have adequate identification of the weapons and relating them to the individual occupants, Black Panther occupants of that apartment . . . that was a prosecutive evaluation, a professional judgment made by me" (8GJ Trans. 5/19/71 Page 74. The Special State's Attorney in 70 8.G.J. 3 agreed with the foregoing judgment. In addition, the State's dismissal of the 1/30/70 Indictment of the Surviving Occupants on 5/8/70 was probably a dismissal with prejudice, barring further prosecution.